**HON'BLE THE CHIEF JUSTICE SHRI G.S.SINGHVI**
**AND**
**HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

**WRIT APPEAL No.172 of 2007**

**Between:**

Samath and 15 others. …Appellants

**AND**

Sri Kalika Devi Temple Bhajana Mandali,
Tandur, Ranga Reddy District,
represented by its Secretary, S.Ramdas
and three others. …Respondents

**:: J U D G M E N T ::**

Counsel for the appellants : Sri K.Raghuveer Reddy

**22nd February, 2007**

**Per G.S.Singhvi, C.J.**

This appeal is directed against order dated 19-12-2006 passed by the learned Single Judge in Writ Petition No.6181 of 1997, whereby he directed respondent Nos.1 to 3 to allot the shops constructed in the premises of Sri Kalika Devi Temple, Tandur, Ranga Reddy District (hereinafter described as 'the temple') by public auction in accordance with the provisions contained in the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties (other than Agricultural Lands) Lease Rules, 1982 (for short, 'the Rules').

The temple is located in the heart of Tandur Town. Prior to the enactment of the Andhra Pradesh Charitable and Hindu Religious

Institutions and Endowments Act, 1987 (for short, 'the Act'), the temple was managed by a self-styled committee. After coming into force of the Act, Assistant Commissioner of Endowments, Ranga Reddy District (respondent No.3) constituted a Board of Trustees (for short, 'the Board') in terms of Section 15(3) of the Act. In due course, a new Board headed by Sri Korror Mallikarjun was constituted. The new Board decided to construct shopping complex by taking help from private individuals. The appellants are said to have jointly contributed a sum of Rs.3 lakhs for constructing the shopping complex. In lieu thereof, the Board leased out the shops to the appellants for a fixed period of three years with liberty to adjust part of their contribution towards monthly rent. The tenure of the lease is said to have been extended from time to time. The last extension ended on 31st August, 2004.

In the meanwhile, Sri Kalika Devi Temple Bhajana Mandali, Tandur (respondent No.1 herein) filed Writ Petition No.6181 of 1997 for issue of a mandamus to respondent Nos.1 to 3 to put 17 shops including those allotted to the appellants to public auction in accordance with the provisions contained in Rules 3 and 4 of the Rules. The case set up by respondent No.1 was that there is no provision in the Act and the Rules for leasing out the temple property by private negotiation and, therefore, the decision of the Board to lease out the shops of the temple to non-petitioners No.4 to 19 was nullity. It was also the case of respondent No.1 that construction of the commercial complex by involving non-petitioners No.4 to 19 was unwarranted and the shops could not have been allotted to them in violation of the rules merely because they had made financial contribution and, in any case, after expiry of the term of lease, the shops should have been allotted by holding public auction, which would have fetched more revenue.

The theme of the counter affidavits filed on behalf of the official respondents was that the shopping complex was constructed from the

funds made available by private parties and, therefore, the shops were leased out to them for a period of three years on a monthly rent of Rs.300/- with a stipulation that they can deduct Rs.100/- towards the contributions made by them. In the affidavit filed on behalf of respondent Nos.1 to 3, it was averred that the issue relating to renewal of lease was under consideration. In the counter affidavit filed on behalf of the appellants by Sri Y. Ramakrishna (appellant No.12 herein), it was averred that lease of the shops had been renewed from time to time and the last renewal ended on 31st August, 2004.

After considering the pleadings of the parties and hearing their advocates, the learned Single Judge declared that even though the temple authorities had entered into an agreement with non-petitioners No.4 to 19 (the appellants herein) for construction of the shopping complex and in lieu of their contribution, the shops were leased out to them, this arrangement cannot continue for indefinite period. Accordingly, he directed respondent Nos.1 to 3 to alienate the shops by public auction in accordance with the Rules instead of resorting to allotment by way of private negotiation.

Sri K.Raghuveer Reddy, learned counsel for the appellants argued that in view of the agreement executed by the temple authorities in their favour, his clients acquired vested right to occupy the shops till the realization of the amount contributed by them for construction of the shopping complex and the learned Single Judge gravely erred by directing respondent Nos.1 to 3 to auction the shops. Sri Reddy emphasized that tenure of the lease granted to the appellants had been extended from time to time without any objection from any quarter and, therefore, at this belated stage, the shops cannot be put to auction and that too when they are yet to recover the amount contributed for construction of the shopping complex.

We have given our most anxious consideration to the arguments of the learned counsel, but have not felt persuaded to agree with him. Rules 3, 4 and 15 of the Rules, which have bearing on the decision of

this appeal read as under:

"**3**(1). All leases or licences shall be made by way of public auction.

Provided that the Commissioner may, on a request made in writing by the Executive Authority permit the lease of any property or right other wise than by way of public auction, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. He may grant permission to such executive authority to grant a lease otherwise than by way of public auction.

(2) The public auction shall be held at the place where the properties are situated or rights exists.

Provided that the competent authority may, if he is satisfied that in case the holding of auction at a place other than the one in which the properties proposed to be leased or licensed are situated, will not be detrimental to secure a proper bid or will be held to secure a better bid or to thwart local collusion among the bidders, permit such auction but no auction shall be held, in a district other than the one in which the property is situated."

**4** (1). In the case of immovable properties such as building and sites to be given or used for residential purposes only; leases shall be granted. In the case of other immovable properties such as shops, buildings, sites etc., to be given or used for the purposes of running business and such other rights of usufruct, fishery, collection of coconut prices, human hair etc., licences shall be granted.

(2) (a) No lease of immovable property shall be granted for a period exceeding three (3) years.

(b) No license shall be granted for a period of three (3) years.

(c) (a) Where it is proposed to grant lease or licence for a period of (3) years the limits specified in Sub Rule 2 (a) & (b) the Executive Authority shall obtain the prior permission of the Commissioner before causing publication of the notice under Rule 6 of these rules duly submitting proposal to the Commissioner.

(b) (i) The Commissioner, on receipt of the proposal from

the Executive Authority shall invite objections and suggestions for the proposed lease or license and the notice shall specify the date before which such objections and suggestions are to be received. The notice shall be published in the locality where the property is situated.

(ii) The Commissioner may after considering the objections and Suggestions if any received, accord permission for such a period not exceeding five (5) years with such terms and conditions as may be specified for the lease or license to be conducted in public auction.

(iii) The Government shall be the competent authority to grant permission for any lease or license for a period exceeding five (5) years by duly following the above procedure."

**15.** Any lease or license granted, continued or allowed to be continued otherwise that in accordance with these rules shall be null and void.

Provided that any lease or license subsisting by the date of notification of these rules of any immovable property or right may be continued according to such terms and conditions and also on the rent payable there to, till the expiry of the period of the lease or license as may be decided upon by the Additional Commissioner on a proposal received from the Executive Officer or Chairman or the Person-in-management as the case may be."

A conjoint reading of the provisions reproduced above shows that immovable property belonging to any charitable or religious institution or endowments can be alienated by way of lease or licence, which is required to be granted by holding public auction. Proviso to Rule 3(1) does empower the Commissioner to permit lease of any property or right otherwise than by way of public auction if, on a request made by the Executive Authority, he is satisfied that the interest of the institution or endowment will not suffer by adopting such course. If the Commissioner decides to exercise power under the proviso to Rule 3(1), then the same has to be reflected in the form of reasons to be recorded in writing. Rule 4 limits the tenure of lease to

three years. Rule 15 declares that any lease or licence granted, continued or allowed to be continued otherwise than in accordance with the Rules shall be null and void. It is, thus, clear that the scheme of the Rules does not contemplate grant of lease otherwise than by way of public auction except on fulfillment of the conditions enumerated in the proviso to Rule 3(1).

The facts of the present case show that lease of the shops was granted to the appellants otherwise than by way of auction. Before doing so, the concerned officer of the temple did not obtain order from the Commissioner in terms of the proviso to Rule 3(1) of the Rules. Therefore, the very grant of lease to the appellants has to be treated as nullity.

It is also borne out from the record that the term of lease granted to the appellants was only three years, but they did not surrender possession at the end of that period and were allowed to continue to occupy the shops. According to the appellants, the term of their lease was extended from time to time and the last extension was up to 31-8-2004. Even if that be so, the occupation of the shops by the appellants after 31-8-2004 has to be treated as illegal. Therefore, the learned Single Judge did not commit any error by directing the official respondents to grant fresh lease by conducting public auction and we do not see any reason to take a different view.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.302 of 2007 filed by the appellants for interim relief is also dismissed.

**G.S.SINGHVI, C.J.**

22nd February, 2007

**C.V. NAGARJUNA REDDY, J.**

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